

life shall have the emblements; and consequently, in all such cases, where the *fieri facias* is levied in the life-time of the debtor, as it evicts the personal property, so taken, from the executor of the deceased, the emblements which otherwise would have passed into the hands of the executor, may, when they ripen after the death of the debtor, be gathered and sold under the *fieri facias*. But if the owner of the land devises it to another, and dies, then, as the emblements pass to the devisee, the creditor will be thus, as by an alienation by deed, deprived of all satisfaction which he might otherwise have obtained from them. Considering the reason of these rules of law, it would seem, that the lien of a judgment obtained against the owner, in his life-time, would not, of itself, evict the emblements from the executor of the deceased, and prevent them from passing in their ordinary course as personalty. *Com. Dig. tit. Execution, C. 3 and C. 4; Am. and Fer. Fixtures, 173; Jac. Dict. v. Emblements.*

Besides those subjects of property which constitute a part of the land, as fixtures or emblements, there are others of an incorporeal nature which are in no way visibly attached to the land; but yet are considered as real estate, though they lie not in tenure; because they issue out of, or concern, or are annexed to, or are exercisable within a corporate, tangible and visible inheritance, which is or may be holden; such as rents, estovers, common, or any other profits whatever granted out of land which savor of the realty; and are, therefore, in most respects, regarded as real estate. Under this general description of incorporeal hereditaments, various kinds of very valuable and productive property are *comprehended. As an assessment upon lands; a towing-path, a toll-gate turnpike road stock, canal stock; and, in **314** general, the stock of any incorporated, or joint stock company, the profits of which are derived chiefly, or altogether, from land used in any way whatever. *Co. Litt. 19; Morgan v. Mansel, 2 Plow.; The King v. The Mayor of London, 4 T. R. 21; The King v. Page, 4 T. R. 543; Drybutter v. Bartholomew, 2 P. Will. 127; Buckeridge v. Ingram, 2 Ves., Jun., 652; Knapp v. Williams, 4 Ves. 430, note; Finch v. Squire, 10 Ves. 41; Powel Mortg. 142.*

The consequences of considering all these various kinds of incorporeal hereditaments as real estate, are, that they may be intailed; that, in the absence of any special legislative provision upon the subject, they can only be assigned, or transferred from one to another by the same written solemnities made necessary by law to pass lands; that is, all contracts concerning them must be made according to the provisions of the Statute of Frauds, and the Acts of Assembly which require contracts for land to be in writing and recorded; and all devises of them must be in conformity with those legislative enactments respecting wills of real estate. If the owner of them dies intestate they descend to his heirs, and his